

After reviewing the entire record, and for purposes of preliminary hearing, the Appeals Board finds as follows:

(1) Under K.S.A. 44-534a the Appeals Board has jurisdiction to review the findings whether claimant sustained personal injury by accident arising out of and in the course of his employment with the respondent and whether claimant provided timely notice.

(2) The Special Administrative Law Judge found claimant sustained a series of accidents culminating on his last day of work on February 27, 1995.

Claimant testified he initially experienced pain in his low back on or about February 15, 1995 while he was stacking tires for the respondent. Claimant testified he notified the shop foreman of the incident on the same day and told the foreman he was not going to immediately consult a physician but would wait to see if his symptoms resolved. The shop foreman testified claimant did not tell him about the incident and that he did not learn of the alleged injury until sometime in March. Claimant also testified his symptoms progressively worsened from the time of the incident through his last day of work on February 27, 1995. On March 6, 1995 claimant first saw a physician for his back. The physician's notes from that day indicate claimant had been complaining of low back pain for the past several days and that he performed a great deal of lifting at work. The nurse's notes from the same day indicate that claimant did not know of any specific injury but that he did perform heavy work repairing semi-truck tires. Subsequent medical evaluation indicates claimant has sustained a herniated disc in the lumbar spine and may require surgery. Claimant also testified he telephoned the respondent on either March 8 or March 9, 1995 and advised the company of his back injury.

Based upon the above evidence, the Special Administrative Law Judge found that claimant's back injury continued through the last day of work on February 27, 1995. Although the Judge did not make a specific finding of timely notice, the evidentiary record is sufficient to support the finding that timely notice was provided either on the date of the incident or on March 8 or on March 9, 1995.

The Appeals Board finds the Preliminary Hearing Order of the Special Administrative Law Judge should be affirmed. Claimant's testimony, coupled with the medical evidence, proves for preliminary hearing purposes, that claimant sustained a back injury on or about February 15, 1995 while stacking tires for the respondent and that the injury continued through his last day of work on February 27, 1995. The Appeals Board also finds claimant provided timely notice of accident to the respondent within ten (10) days of the injury. Both claimant and respondent's shop foreman testified at the preliminary hearing. Therefore, the Judge had the opportunity to observe their demeanor and assess their credibility. Where the testimony is in conflict and the Administrative Law Judge had the opportunity to observe the in-person testimony of the witnesses, the Appeals Board gives some deference to the opinion and findings of the Special Administrative Law Judge.

(3) The Appeals Board does not have jurisdiction to reweigh the evidence to determine whether claimant is entitled temporary total disability benefits. That determination is within the authority of the Special Administrative Law Judge and is, therefore, neither subject to review under the provisions of K.S.A. 44-551 nor K.S.A. 44-534a.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Special Administrative Law Judge William F. Morrissey, entered in this proceeding on August 3, 1995, should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October, 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: David V. Jackson, Wichita, Kansas  
Eric K. Kuhn, Wichita, Kansas  
William F. Morrissey, Special Administrative Law Judge  
Philip S. Harness, Director